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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

NO. 425

NATIONAL LABOR RELATIONS BOARD
Petitioner

vs.

HIGHLAND PARK MANUFACTURING COMPANY
Respondent

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR HIGHLAND PARK MANUFACTURING COMPANY

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BRIEF FOR HIGHLAND PARK MANUFACTURING COMPANY

ARGUMENT

I

WHEN A LABOR ORGANIZATION AFFILIATED WITH THE C. I. O. FILES A CHARGE WITH THE NATIONAL LABOR RELATIONS BOARD, NO COMPLAINT MAY BE ISSUED THEREON UNLESS THE OFFICERS OF THE C. I. O. HAVE COMPLIED WITH THE REQUIREMENTS OF SECTION 9 (h) OF THE NATIONAL LABOR RELATIONS ACT AS AMENDED

Section 9 (h) of the National Labor Relations Act as amended stipulates that:

> ". . . no complaint shall be issued pursuant to a charge made by a labor organization . . . unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party (and does not have the proscribed associations or beliefs)."

Thus, it is specifically directed that if a labor organization filing a charge is affiliated with or is a constituent unit of "any national or international labor organization," then the officers of such "national or international labor organization," as well as the officers of the labor organization making the charge, must fulfill the non-communist affidavit requirements—otherwise the issuance of a complaint by the Board is expressly forbidden.

The charge in this case was filed by "Textile Workers Union of America, CIO." [1] It is undisputed that Textile Workers Union of America is a labor organization within the meaning of Section 9 (h) of the Act and that its officers have been in compliance with the requirements of Section 9 (h) at all times pertinent to this case. It is further undisputed and conceded by the Board that Textile Workers Union of America is and at all times pertinent to this case has been "affiliated" with the C. I. O. (Board's Petition, p. 2 and 3 and Board's Brief p. 18). Likewise, it is undisputed and conceded by the Board that at the time the complaint was issued in this case and at all times prior thereto the officers of the C. I. O. had failed to comply with the requirements of Section 9 (h) of the Act (Board's Petition p. 2 and 3 and Board's Brief p. 18).

Since, therefore, the charging Union was admittedly affiliated with the C. I. O. and since the officers of the C. I. O. admittedly had not complied with the requirements of Section 9 (h), the only question in the case is whether the C. I. O. was a "national or international labor organization"—it being undenied that in such situation the officers of a "national or international labor organization" would be required to comply.

The state of the decisions on this question is as follows. The Court below in the present case, *National Labor*

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[1] In the space provided in the charge for the "Full name of labor organization or person filing charge," the filing organization wrote the name set forth above, that is, "Textile Workers Union of America, C. I. O." and by such name it has been known and designated throughout all the proceedings in this case.

Relations Board vs. Highland Park Manufacturing Company, 184 F. 2d 98, the United States Court of Appeals for the Fifth Circuit in *National Labor Relations Board vs. Postex Cotton Mills,* 181 F. 2d 919, and the United States District Court for the Northern District of Texas in *Oil Workers Union vs. Elliott,* 73 F. Supp. 942 have all held that the C. I. O. is a "national labor organization" within the meaning of Section 9 (h) of the Act. The National Labor Relations Board has ruled to the contrary, though against the opinion of its General Counsel and with one member dissenting, *Matter of Northen Virginia Broadcasters,* 75 N. L. R. B. 11. So also has the United States Court of Appeals for the District of Columbia, with one Judge dissenting, in *West Texas Utilities Company vs. National Labor Relations Board,* 184 F. 2d 233.

A. *The Provisions of Section 9 (h) Are Unambiguous and Its Purpose and Intent Is Clear.*

Is, or is not, the C. I. O. a national or international labor organization? A natural use of common knowledge and the English language would indicate nothing other than an affirmative answer to this question. Certainly it would not occur to the average person to deny that the C. I. O. is a labor organization and that it is national in its scope and operation and is, therefore, a national labor organization.

This Court has itself so identified and referred to the C. I. O., that is, as "a national labor organization." *C. I. O. vs. McAdory,* 325 U. S. 475. As concisely stated by the Court below in the present case "The C. I. O. is unquestionably a national labor organization," and as likewise pointed out by the Court of Appeals in the *Postex* case:

"To determine that the C. I. O. does not come within the terms of the Statute would require us to overlook the realities and substance of its objectives and operations."

Since, however, the Board presents elaborate argument to the effect that the C. I. O. is not, except in certain situations which will be hereinafter discussed, a "national labor organization" within the meaning of the Act, it becomes necessary to consider analytically and in detail whether the phrase as used in the Act is intended to cover and include an organization such as the C. I. O.

In making such an analysis, it is first important to consider the purpose and the end sought to be accomplished by the enactment of Section 9 (h) of the Act. As to this there can hardly be any dispute. This Court has already considered what the objective of Congress was in enacting Section 9 (h).

"Substantial amounts of evidence were presented to various committees of Congress, including the committees immediately concerned with labor legislation, that Communist leaders of labor unions had in the past and would continue in the future to subordinate legitimate trade union objectives to obstructive strikes when dictated by Party leaders, often in support of the policies of a foreign government. And other evidence supports the view that some union leaders who hold to a belief in violent overthrow of the Government for reasons other than loyalty to the Communist Party likewise regard strikes and other forms of direct action designed to serve ultimate revolutionary goals as the primary objectives of labor unions which they control. . . .

"It is sufficient to say that Congress had a great mass of material before it which tended to show that Communists and others proscribed by the statute had infiltrated union organizations not to support and further trade union objectives, including the advocacy of change by democratic methods, but to make them a device by which commerce and industry might be disrupted when the dictates of political policy required such action."

C. I. O. vs. Douds, 339 U. S. 382,
70 S. Ct. 674, 94 L. Ed. 925.

In Congress the Leader of the House declared that the purpose of this enactment was:

". . . to deal with the matter of Communist domination and *leadership* in unions (emphasis supplied)."

93 Cong. Rec. 6382,
June 4, 1947.

In the Senate similarly the evil sought to be remedied by Section 9 (h) of the Act was expressed as follows:

"Therefore, those who are really Communist are not loyal to our country. *If they rise to positions of power as officers* in labor organizations, then, with the law that we enact, investing certain powers in labor organizations . . . we are simply placing the power and authority and the sanction of law behind men who are in those positions . . ." (emphasis supplied).

93 Cong. Rec. 4894,
May 9, 1947.

The Board concedes that:

> "The compliance provisions disclose a Congressional policy of seeking to eradicate Communist *leadership* from labor organizations." (emphasis supplied).
>
> *New Jersey Carpet Mills, Inc.*, 92 N. L. R. B. No. 122.

Even in its opinion in the *Northern Virginia Broadcasters* case the Board stated that in enacting Section 9 (h) it was the purpose of Congress:

> "To eliminate Communist influence from the labor movement of the United States."
>
> *Matter of Northern Virginia Broadcasters*, 75 N. L. R. B. 14.

Yet the Board argues for an interpretation of Section 9 (h) which faces exactly in the opposite direction from what it admits to be Congress' basic purpose and intent. In seeking to eliminate the powerful head organizations like the C. I. O. and A. F. L. from the general coverage of Section 9 (h), the Board so alters its statement of Congress' intent that it should read instead to the effect that the purpose of Congress was "to eliminate Communist influence from the labor movement of the United States—except at the top!"

On the contrary it was most certainly the purpose of Congress to eliminate Communist influence from the labor movement wherever it might be found—whether at the top, bottom or at intermediate stages. As is well stated by the Court of Appeals in the *Postex* case:

"We think the language of the Statute, considered in the light of Congressional purpose, the evil to be remedied and the means provided to effectuate that purpose, evidence Congressional intent to wholly eradicate and bar from leadership in the American labor movement, *at each and every level*, adherents to the Communist Party and believers in the unconstitutional overthrow of our Government." (emphasis supplied).

National Labor Relations Board vs. Postex Cotton Mills, 181 F. 2d 919, 920.

Indeed it would seem that the high levels of power and influence[2] in the labor movement are the realms in which it would be most important for the provisions of Section 9 (h) to operate in order to effectuate the intent of Congress. As ably expressed by the Court below:

"In the light of this purpose, it is perfectly clear that it is much more important to exclude communists and others plotting the overthrow of the government by force from holding office in the great national labor organizations such as the C. I. O. and the A. F. L. than to exclude them from office holding in their affiliates; and it is not reasonable to suppose that Congress did not intend the officers of the former to be covered by its provisions. It is true that it is the officers of the affiliates who call the strikes; but it is the officers of the national or parent organizations

[2] The manner and extent to which the C. I. O. and A. F. L. do determine, guide and participate in the policies, functions and activities of their affiliated labor organizations is hereinafter developed.

who shape labor policies that cause the strikes to be called, and this is particularly true of general strikes or strikes having a political purpose."

National Labor Relations Board vs. Highland Park Manufacturing Company, supra.

To the same effect was the dissenting opinion of Board Member Gray in *Northern Virginia Broadcasters, supra:*

"The officers of the A. F. L. and the C. I. O. have been recognized as the spokesmen and representatives of organized labor in this country. It was the A. F. L. Executive Council which recommended on December 15, 1941, that 'a no-strike policy shall be applied in all war and defense . . . industries.' On the following day, the conference of A. F. L. presidents adopted this recommendation.

"The extent of the influence wielded by the A. F. L. is also apparent from the control which it exercises over the 'jurisdiction' of its member unions. Awards of the governing body may be subject to enforcement through expulsion from the organization. Conversely, the member unions exercise a measure of control over their parent organization through the election of its officers.

"It is therefore apparent that the A. F. L. may exercise direct and influential control over its constituent unions in important respects and that A. F. L. officers occupy a strategic position to affect the economic life of the Nation. Under these circumstances, it is inconceivable that Congress was not concerned

with the Communist affiliation of the officers of the A. F. L. and C. I. O. in accomplishing its intended purpose of purging labor of Communist influence."

In short, is it reasonable to suppose that Congress was deeply concerned with ferreting out union officers who might be Communists at all lower levels no matter how remote or obscure but that Congress had no interest at all in whether Communists occupied high positions of power and influence in the labor movement?

To this the Board replies with the paradoxical argument that to require the officers of the C. I. O. to file non-communist affidavits would tend to defeat rather than to serve Congress' purpose, for if any one of them failed to make such affidavit, then all the labor organizations affiliated with the C. I. O. would thereby be deprived of the machinery and procedures provided by the Act and such affiliated organizations would, therefore, lose all incentive to comply themselves.[3] It is respectfully submitted that a much more reasonable and likely sequence would be that the affiliated labor organizations, if they sufficiently desire to avail themselves of the benefits provided by the Act, would bring such pressure to bear upon the recalcitrant

[3] Just as truly, of course, hundreds of local unions and many thousands of members belonging to any one of the large national or international unions, such as Textile Workers Union of America, would be in the same manner deprived of the machinery and procedures of the Act upon failure of any officer of such union to comply with the requirements in question. But the Board of course does not deny that Congress nevertheless imposed the requirement in such situation—Congress evidently considering that the pressure thus engendered would not thwart, as the Board contends, but rather would serve the purpose of the Statute.

C. I. O. officer that he would either comply with the requirements of Section 9 (h) or be removed from his position[4] thereby accomplishing exactly what Congress was seeking to accomplish.[5] This is well summarized by the Court below as follows:

> "If the statute is construed in accordance with its express language to deny governmental support to unions that are affiliated with national organizations which refuse to comply with its anti-communist provisions, the result will be either that the national organizations will comply with the statute, or that they will be segregated from the effective body of loyal American labor by the withdrawal of their affiliates. In either event, the labor movement will be effectively protected from the danger of communist

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[4] In this connection it might be noted that the Joint Committee on Labor-Management Relations reported to Congress in 1948 that "in many instances unions have taken decisive action to compel reluctant officers to comply with the filing requirements." S. Rep. No. 986, 80th Cong. 2nd Sess. Pt. 1, p. 10-12.

[5] There is set forth hereinafter as Appendix II to this Brief an account, derived from the Preliminary Report of the Joint Committee on Labor-Management Relations, the Daily Labor Reporter and the Official Report of Proceedings of the American Federation of Labor, which shows that as a practical matter and contrary to the Board's present theorizing on the subject, the original ruling of the Board's General Counsel to the effect that the provisions of Section 9 (h) did extend to the C. I. O. and A. F. L. produced intense pressure for compliance upon the officers of those organizations from the constituent and affiliated unions and, whereas a "'show-down" between the anti-communist and the pro-communist unions was rapidly developing, the Board's reversal of its General Counsel's ruling immediately had the effect of eliminating all pressure towards such end.

leadership in the formulation of labor policies; and this is evidently the end to which the legislation was directed. We see no occasion to emasculate the statute by resorting to forced rules of interpretation when its language is perfectly clear and gives unqualified support to the purpose which Congress had in mind. The office of interpretation is to resolve ambiguities, not to create them."

National Labor Relations Board vs. Highland Park Manufacturing Company, supra.

As regards the purpose of Congress in enacting Section 9 (h) it is respectfully submitted that there can be no reasonable doubt but that Congress intended that Section as a means to help root Communism out of the labor movement and that it intended the Section so to operate at all stages and levels of all labor organizations throughout the land.

B. *The C. I. O. Is a "Labor Organization" Within the Meaning of the Act.*

The Board next says, however, that Congress in the phrase "national or international labor organization" failed to use words aptly describing or encompassing an organization such as the C. I. O. Pursuing this proposition the Board first points to the fact that "labor organization" is defined in the Act, Section 2 (5), and then contends that the C. I. O. does not meet that definition.

Section 2 (5) defines "labor organization" as "any organization of any kind . . . in which employees participate and which exists for the purpose, in whole or in part,

of dealing with employers concerning grievances, labor disputes (etc.)." The Board says that the C. I. O. is not such an organization. But it no sooner makes this contention than it modifies it to the effect that *most of the time* the C. I. O. is not a labor organization as thus defined. For the Board admits that in the large body of situations where the C. I. O. directly charters local unions, it is an organization "in which employees participate" and which deals "with employers concerning grievances, labor disputes (etc.)" and is, therefore, a labor organization within the definition of Section 2 (5). If the C. I. O. is thus somethimes a labor organization, it is difficult to see how the Board can deny that *it is* a labor organization. And certainly since the defining provision is that a labor organization "exists for the purpose, in whole or *in part*, of dealing with employers" and since the Board admits that the C. I. O. does in a substantial body of situations so deal with employers, the question would seem to be disposed of.

The Board disregards this, however, and points out that in most situations the C. I. O. does not directly charter local unions but an intervening national or international union, like Textile Workers Union of America, does so and is itself in turn affiliated with the C. I. O.; and the Board contends that in such cases employees do not "participate" in the C. I. O. and the C. I. O. does not exist "for the purpose, in whole or in part, of dealing with employers" and that, therefore, in such cases the C. I. O. is not a labor organization within the definition of Section 2 (5) of the Act. The answer to this is, however, that even where there is an intervening national or international union, like Textile Workers Union of America, between the C. I. O. and the local unions, still the truth and reality of the matter is that in such situation the employees do

"participate" in the C. I. O. and the C. I. O. does exist "for the purpose, in whole or in part, of dealing with employees."

In the case of *Congress of Industrial Organizations vs. McAdory*, 325 U. S. 472, 65 S. Ct. 1395, 89 L. Ed. 1741, the C. I. O. made allegations and produced voluminous evidence tending to establish among other things that, generally and without reference to directly chartered local union situations, employees do participate in the C. I. O. and that it does exist in very large part for the purpose of dealing with employers. Excerpts from the Transcript of Record on file with this Court in that case are set forth hereinafter as Appendix I to this Brief. The Record in that case discloses for example the following:

> "All Complainant unincorporated associations (which included the C. I. O.) are organizations and associations of employees, including employees working in the State of Alabama, and including employees working in Jefferson County, Alabama, in various trades, occupations and industries who have from time to time assembled and associated together and are assembling and associating together for the purpose of organizing themselves into voluntary and unincorporated associations and for the purpose of forming, joining and assisting their organizations so formed, including the complainants herein named, to bargain collectively through representatives of their own chosing and to engage in concerted activities for the purpose of collective bargaining and otherwise dealing with their employers concerning hours of employment, rates of pay, tenure or other terms or con-

ditions of employment, grievances of any kind relating to employment, and for other mutual aid and protection."

Appdx. I P. 3-4

* * *

"In the effectuation of the purposes aforementioned it is the necessary objective and practice of labor organizations and of the complainants herein mentioned (which included the C. I. O.) and their affiliates to negotiate and bargain with persons employing members of such organizations with respect to wages, hours, tenure, and other terms and conditions of employment of the members of said unions and pertaining to other matters affecting or threatening the economic standards and the mutual welfare of the members of said union and to arrive at mutual agreements embodied in collective bargaining contracts with said employers."

Appdx. I P. 5

* * *

"Q. What is your name?

A. John Brophy.

Q. Where do you live?

A. Washington, D. C.

Q. In what business are you engaged?

A. My present position is Director of Industrial Unions Councils, which is a central body of C. I. O.

Q. How long have you been connected with the C. I. O.?

A. Since its inception in 1935, December of that year.

Q. Have you devoted all of your time to C. I. O. work since its inception?

A. I have. I was Organizational Director from the inception of C. I. O. up to and including the year 1940, and from then on I have been Director of the Industrial Union Councils."

Appdx. I P. 7-8

* * *

"Q. Were you one of the organizers of the Committee for Industrial Organization?

A. Yes. I was one of the original Committee that set up the Committee for Industrial Organization."

Appdx. I P. 9

* * *

"Q. Now, as Director of Industrial Union Councils, have you been involved in directing organizing campaigns?

A. Yes, I have. My work has been to advise and counsel in that work.

Q. How about your participation and connection in collective bargaining agreements?

A. I have been engaged in large scale collective bargaining.

Q. In the making of the agreements and administration of unions after agreements have been made?

A. Yes."

Appdx. I P. 9

* * *

"Q. Now, as Organizational Director and Director of Industrial Councils for C. I. O. . . . have you been in constant touch with national and local unions, with labor unions affiliated with the C. I. O.?

A. I have been constantly in touch with all National unions as to their various activities, with particular reference, of course, to organizing work and also to the collective bargaining program.

Q. Have the officials brought in to you their problems and discussed them with you?

A. Yes.

Q. Have you in turn given them the benefit of your experience with other organizations, other locals, other unions?

A. I have.

Q. And the experience you gathered as a national official of the C. I. O.?

A. Yes."

Appdx. I P. 10

* * *

"Q. Could you give the Court a rough estimate of the International unions that are now a constituent part of members of the Congress of Industrial Organizations?

A. About thirty-five National and International Unions comprise the Congress of Industrial Organizations.

Q. How many members approximately would you say your organizations have?

A. Some six million members.

Q. Do they operate in practically every State of the United States, including the State of Alabama?

A. They do.

Q. Just what was the circumstances which gave rise to the Committee for Industrial Organizations and later the Congress of Industrial Organizations?

A. The necessity of establishing industrial unions that could pool together the strength and experience for the purpose of effectively advancing the work of organization and establishing collective bargaining. It was the conviction of the original group the industrial union type of this organization was best fitted to cope with modern industry. The development of industry the last score or more of years has been large scale, covering several or more states, and concentrating power in a given industry; and to effectively do the job of organizing and to be able to cope adequately at the bargaining table, it was neces-

sary to have a type of union, the industrial form of union, in order to cope with widespread corporate industrial organization of the employers.

Q. Would you say that the organization of the employers had become larger and more extensive in recent years?

A. Yes, very much so.

Q. From your experience, is it your judgment that such an organization as C. I. O. is a practical necessity in order that workmen, or the employees, may bargain with anything like approximate equality with employers in Alabama?

A. I do, yes."

Appdx. I P. 10-11

* * *

"Q. Now, is it the professed aim of the C. I. O. to organize not merely the employees of a particular plant but employees of all plants in a particular industry that are operating in the state?

A. It is to organize all the workers engaged in a particular industry."

Appdx. I P. 12

* * *

"Q. By balance of the two forces, you mean balance of bargaining power between the employee on one hand and the employer on the other hand.

A. That is right, of course, I may say this, that under present conditions, the war emergency, the C. I. O. has given a pledge to refrain from the strike

weapon; and the policy of the C. I. O. to observe that pledge of no-strike during the war, of course, that is made possible because of the fact there is an agency, the War Labor Board, to whom disputes, and the failure of settlement, to whom disputes between employer and employee may be submitted and adjudicated."

Appdx. I P. 12-13

* * *

"Q. Mr. Brophy, has it or not been the policy and custom of the C. I. O. to refuse to handle non-union material?

A. There have been many instances where they have refused to handle non-union material.

Q. Now, as an instrumentality or agency in union work and organization is the power and right to refuse to handle non-union material, and is the exercise of that power, a practical means of strengthening unions?

A. Yes, particularly in the initial stage of organizational activities and the early stages of relationship with the employer."

Appdx. I P. 13

* * *

"Q. And the individual member of that local is not himself a member of C. I. O.?

A. Yes; we are all members of C. I. O. It is just in the same sense you may be a citizen of Birmingham and the State of Alabama and a citizen of the United States, so I may be a member of a local

union that is affiliated with a National Union that is in its turn affiliated with the C. I. O. We have the overall membership, as it were, in this fraternity of local and national unions."

Appdx. I P. 14

* * *

"Q. C. I. O. distinguished from the constituent unions, maintains a treasury of its own, does it not?

A. Yes, it does.

Q. Does any of that money find its way into educational movements?

A. Yes, it does—into all the various educational activities."

Appdx. I P. 14

* * *

"Q. All right. Now then, among the services you render is assistance in negotiating collective bargaining contracts, isn't it?

A. That is true.

Q. Let me understand what function the national C. I. O. itself, as distinguished from its constituent unions, renders with respect to specific contracts for its members?

A. Certain unions may ask that the C. I. O. representative here in Alabama assist in the negotiating of agreements with certain concerns. They can call on our C. I. O. representatives here in the state, or they can confer with our national officers on the subject and ask for special assistance.

Q. All right. Now, you maintain a staff, do you not, to go around and assist in negotiating contracts?

A. We maintain a staff, some of them are stationed at certain places, and they are available, among other things, to assist in negotiations where such assistance is asked for.

Q. You have here in Alabama such men, do you not?

A. Yes.

Q. Can you put their names in the record, or some of them?

A. Well, for instance, Mr. Haigler is present, he is available for consultation and assistance in negotiations; and there may be others sent in from time to time. They are a changing force, some of our people.

Q. Do you have a field organization you send into various states as they are called for for that purpose?

A. Some of them are permanently located, and others are sent in from time to time, depending on the volume of work and other circumstances.

Q. Are those men paid out of the central treasury or the constituent union treasuries?

A. They are paid out of the central treasury, that is, the direct national representatives. In some of our other units, like the State Council, it would be paid out of the state treasury."

Appdx. I P. 14-15

* * *

"Q. It is the objective of the C. I. O. to make the same rates of pay applicable in Alabama as in Pennsylvania?

A. Yes. The union's objective is to get the same pay for the same class of work whether it be Illinois, Pennsylvania, Alabama or Tennessee. In other words, one worker with the same skill as another is entitled to the same rate of pay.

Q. You classify workers into classes determined by what they do and by their experience and skill in doing that thing?

A. That is right.

Q. The policy of the union is to see each man who falls within the same classification receives the same pay, regardless of the state it is performed in?

A. That is the general objective.

Q. Not only the general objective, it is the policy, isn't it?

A. Yes, sir, policy, objective and policy."

Appdx. I P. 16

* * *

"Q. And in addition to that, you carry on a great deal of organizational work?

A. I do."

Appdx. I P. 19

* * *

The A. F. L. stands in the same position as the C. I. O. with respect to the question of whether it is within the scope of Section 9 (h) and in a case companion to that referred to above it made allegations and presented proof similar to that of the C. I. O. Excerpts from the Transcript of Record on file with this Court in that case, *Alabama State Federation of Labor vs. McAdory*, 325 U. S. 450, 65 S. Ct. 1384, 89 L. Ed. 1725, are likewise set forth in Appendix I of this Brief. In this latter case Mr. William Green, President of the A. F. L., made affidavit as follows:

> "The national office of the A. F. L. maintains several hundred regional representatives throughout the nation to assist in the uniform operations and policies of the A. F. L. and its affiliated unions. . . .
>
> "The national office of the A. F. of L. from time to time, upon request of the affiliated organizations, assigns, organizers to said affiliated organizations throughout the country in the organizing of workers in their organizing activities. Specific or general problems of each of the affiliated organizations of the A. F. of L. are frequently brought to the attention of the national officers of the A. F. of L. in order that they or their associates may assist said affiliated organizations in the solution of such problems.
>
> "The A. F. of L. is constantly being called upon to render financial assistance or to furnish personnel to assist its various affiliated organizations in their manifold activities both in terms of organizing, collective bargaining with employers, legislative work, and in all of their other activities and pursuits.
>
> "The national office of the A. F. of L., its officers and representatives, are in constant contact with the

affiliated organizations of the A. F. of L. and their local unions through the country and maintain a regular and steady flow of correspondence, communication, and personal contact through the regional representatives of the A. F. of L. with the personnel of all the affiliated organizations of the A. F. of L. and their respective local unions. The A. F. of L. conveys to the A. F. of L. Unions in Alabama and to all of the A. F. of L. unions throughout the nation the benefit of the experience of the A. F. of L. unions everywhere."

Appdx. I P. 23-25

* * *

"It is the objective of all labor organizations, including the plaintiffs herein (of whom the A. F. L. was one), to negotiate and bargain with persons employing members of such organizations with respect to wages, hours and working conditions of the members of said unions and pertaining to the other matters affecting or threatening the economic standards or the mutual welfare of the members of such unions; to obtain collective bargaining agreements with such employers and to secure the interests in such agreements of clauses requiring employees to become and remain members of the labor organization involved."

Appdx. I P. 26

* * *

The Statute which was involved in the *McAdory* cases defined a labor organization as "every organization . . . having within its membership employees working in the State of Alabama, organized for the purpose of dealing

with employer or employers concerning hours of employment, rates of pay (etc.)." The A. F. L. and C. I. O. instituted suit alleging that this definition applied to them, generally and not simply in situations where they charter local unions directly.[6] Yet after they thus solemnly asserted and presented proof that "employees working in the State of Alabama" were members of theirs and that they were "organized for the purpose of dealing with employers concerning hours of employment, rates of pay (etc.)," the Board now argues that employees do not "participate" in them[7] and that they do not exist "for the purpose, in whole or in part, of dealing with employers concerning . . . rates of pay, hours of employment (etc.)."

The Constitution of the C. I. O. declares that:

> "The objects of the organization are . . . to bring about the effective organization of the working men and women of America . . . to extend the benefits of collective bargaining and . . . to maintain determined adherence to obligations and responsibilities under collective bargaining and wage agreements."
>
> CIO Constitution,
> Article II, 1948

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[6] The same Textile Workers Union of America, which the Board points to as an intermediate or intervening national union rendering the case different, was present as a party in the case of *C. I. O. vs. McAdory* (Appendix I, P. 1).

[7] It is interesting to note that in *Matter of Isaac Andrews* 87 N. L. R. B. No. 62, the Board approved a finding by its Trial Examiner that employees are admitted directly to membership in the A. F. L. without the intervention of any other Union or labor organization whatever, local, national or international.

The Constitution of the A. F. L. refers to procedure at its conventions for the approval and endorsement of the boycotting of the products of employers who might be engaged in a dispute with an A. F. L. affiliate or affiliates, A. F. L. Constitution, Article IX, Section 4; makes provision for the collection of a "per capita tax" from all members of its affiliated unions, as well as special assessments upon them, A. F. L. Constitution, Article X; and vests power in the A. F. L. to levy a special assessment upon all affiliated unions "to assist in the support of" any affiliated union "engaged in a protracted strike or lockout," A. F. L. Constitution, Article XII.

These represent typical activities of a labor organization and, like the allegations and proof in the *McAdory Cases,* refute the Board's unrealistic assertion that when intermediate national or international unions are in the picture, the C. I. O. and A. F. L. have no employees participating in them and do not exist "for the purpose, in whole or in part, of dealing with employers." As is well said by the Court of Appeals in the *Postex* case (quotation already set forth in part above):

> "To determine that the C. I. O. does not come within the terms of the statute would require us to overlook the realities and substance of its objectives and operations. It is a matter of general knowledge that the parent organization does frequently materially support its affiliates by financial aid and otherwise in their efforts of collective bargaining."
>
> *National Labor Relations Board vs. Postex Cotton Mills,* 181 F. 2d 919, 921.

This Court has recognized and referred to the C. I. O. and A. F. L. as "labor organizations" not only in the *McAdory* cases, supra, but also in *A. F. L. vs. Watson*, 327 U. S. 582, 586 and *Hague vs. C. I. O.* 307 U. S. 496. And *Lincoln Federal Labor Union vs. Northwestern Iron and Metal Co.* 335 U. S. 525; *American Federation of Labor vs. American Sash & Door Company*, 335 U. S. 538; and *United States vs. C. I. O.*, 335 U. S. 106, were all tried and disposed of on the basis of the A. F. L. and C. I. O. being labor organizations. Likewise the highest courts of various states have designated and dealt with them as such. *American Federation of Labor vs. Reilly* 113 Colo. 90, 93; 155 Pac. 2d 145, 146; *American Federation of Labor vs. Rone-Anderson Co.* 185 Tenn. 363, 364; 206 S. W. 2d 386.

The Board itself has frequently held organizations such as the C. I. O. and A. F. L. to be "labor organizations" within the meaning of the Act, and not simply in situations where they directly charter local unions, as is now the Board's contention. *Wrought Iron Range Co.*, 77 N. L. R. B. 487; *Kelco Corporation*, 79 N. L. R. B. 759; *Houston Press Co.*, 70 N. L. R. B. 660; *Albemarle Paper Manufacturing Co.*, 70 N. L. R. B. 153; *Volney Felt Mills, Inc.*, 70 N. L. R. B. 908; *Hanson, Clutch & Machinery Company*, 70 N. L. R. B. 1021; *S. W. Evans & Son*, 75 N. L. R. B. 811; *American Fruit Growers, Inc.*, 75 N. L. R. B. 1157; *Bewley Mills*, 77 N. L. R. B. 774; *Dun & Bradstreet*, 80 N. L. R. B. 56; *Isaac Andrews, et al*, 87 N. L. R. B. No. 62.[8]

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[8] It is important to note that if the C. I. O. is not a labor organization within the meaning of Section 2 (5) of the Act, then it is free to engage in coercion of employees and all the other unfair labor practices proscribed by Section 8 (b) of the Act as well as the acts

A careful scrutiny of other sections of the Act makes it abundantly clear that the C. I. O. and A. F. L. are intended to be included when the term "labor organization" or "organization" appears. Section 9 (b) (3) provides that:

> "No labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards."

The Board concedes, presumably because of the use of the word "affiliated," that the word "organization," when it appears the third time in this quotation, includes the C. I. O. and A. F. L. Yet the same word is used, where it appears the second time in the quotation, to refer to a union, such as Textile Workers Union of America, seeking certification as bargaining agent. And the Board, of course, cannot and does not claim that as regards the C. I. O. and A. F. L. the situation contemplated in this Section is confined to cases where they are direct charterers of local unions. In short, the Board concedes that here, although the intermediate national or international union is in the picture, the same statutory word and term, "organization," is used to refer to both the intermediate union and the C. I. O.[9]

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made unlawful in Section 303. For it is labor organizations as defined in Section 2 (5) which are, in Sections 8 (b) and 303, prohibited from engaging in such unfair labor practices and unlawful acts.

[9] Incidentally, the Board's concession as to this Section would seem to dispose of its earlier contention that in situations where there is an intermediate union, employees do not "participate" in the C. I. O.

And in Section 304 the question as to whether the C. I. O. is a labor organization as defined by Section 2 (5) would seem to be put at rest. Section 304 prohibits labor organizations, inter alia, from making certain expenditures of money for political purposes. The Board concedes, (Board's Brief p. 111; and see *United States vs. C. I. O.* 335 U. S. 106), that Congress intended the term "labor organization" throughout this Section to include the C. I. O. in general and certainly without limitation to situations where it is direct charterer of local unions. But Section 304 expressly defines what it means by labor organization and that definition is identical to the definition of Section 2 (5).

Thus in agreeing that the C. I. O., without limitation to its directly chartered local union situations, is a labor organization as defined in Section 304, the Board thereby agrees that the C. I. O., without limitation to its directly chartered local union situations, is a labor organization as defined in Section 2 (5)—for, as pointed out, the definitions in the two Sections are completely identical.

If more be needed on this matter, it is to be found in the fact that in the *Postex* case, where the same intermediate national or international union, Textile Workers Union of America, was present as in the instant case, and where, therefore, there was no situation of directly chartered local unions, and where the same issues were before the Court as in the present case—the Board stipulated as a

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For here the Board agrees that the statute is referring to the C. I. O. when it refers to "an organization *which admits to membership employees* other than guards."

matter of record, and in direct contradiction of its present position, "that the Congress of Industrial Organizations *is a labor organization*" (emphasis supplied).

C. *The C. I. O. Is a "National Labor Organization" Within the Meaning of the Act.*

Next comes the Board with the proposition that apart from whether the term "labor organization" as used in the Act includes the C. I. O., at any rate the term "national or international labor organization" does not include the C. I. O. The theory upon which the Board contends that the phrase "national or international labor organization" does not include the C. I. O. is that these words are not to be taken in their natural and ordinary meaning but as "a term of art" in "labor relations parlance" (Board's Brief 100 and 106) and that as a term of art they refer to national and international unions like Textile Workers Union of America and to an organization such as the C. I. O. when, but only when, it occupies its special status of direct charterer of local unions. It must be presumed, says the Board, that Congress used the phrase "national or international labor organization" as such term of art having these specialized connotations.

It seems quite a presumption indeed that the Board thus invites the Court to make as regards Congress' intent. In the first place, it is entirely unlikely that Congress was aware of the special meaning, with its intricate qualifications, which the Board seeks to attribute to the words "national or international labor organization." In the second place, if there is to be any presumption on the matter, it should certainly be in the opposite direction, that is, that in construing a statute it will be presumed that

the legislative body used words in their ordinary sense and according to their common import to men generally and not as terms of art known to a specialized few. *Old Colony Railroad Company vs. Commissioner*, 284 U. S. 552, 560; *Addison vs. Holly Hill Fruit Company*, 322 U. S. 607, 617-618; *United States vs. Stewart*, 311 U. S. 60, 63; *Deputy vs. Dupont*, 308 U. S. 488, 498; 2 Sutherland *Statutes and Statutory Construction* P. 437, 3d Ed. 1943.

Furthermore, the Board cites no authority for its assertion that the phrase "national or international labor organization" has the specialized meaning even in "labor relation parlance" which the Board seeks to attribute to it. The Board does quote from a number of authors in the field of labor relations. These quotations merely set forth, however, the general relations existing between the A. F. L. and C. I. O. and the local unions and the national and international unions, such as Textile Workers Union of America. Not one of these authors says in any way that the phrase "national or international labor organization" does not include the A. F. L. and C. I. O. or that it is not an apt phrase to use in referring to the A. F. L. and C. I. O.

This Court in *C. I. O. vs. McAdory, supra*, designated and referred to the C. I. O. as a "national labor organization":

> "Petitioners are the *Congress of Industrial Organizations, a national labor organization*, and certain affiliated labor organizations . . ." (emphasis supplied).

In the companion case of *Alabama State Federation of Labor vs. McAdory*, Chief Justice Stone used the same words "national labor organization" in referring to the A. F. L. So did this Court again in *American Federation of*

Labor vs. Watson, 327 U. S. 582, 586. It is reasonable and it is a recognized principle of statutory construction that Congress is to be taken as using words in the same sense that the Supreme Court has used them. *Abbottsford vs. Johnson*, 98 U. S. 440; *Grover Sewing Machine Company vs. Florence Sewing Machine Company*, 18 Wall 553; *United States vs. Mooney*, 116 U. S. 104; *Kepner vs. United States*, 195 U. S. 100; *Hecht vs. Malley*, 265 U. S. 144.

And once again a scrutiny of the provisions of the statute refutes the contention which the Board makes. Section 9 (h) says that the labor organization filing a charge and any national or international labor organization of which it is an "affiliate or constituent unit" must comply with the filing requirements set forth in the Section. The term "constituent unit aptly describes the relation between a local union and a national or international union, such as Textile Workers Union of America. It likewise appropriately describes the relation between a local union and the C. I. O. in situations where such local union is directly chartered by the C. I. O., the relationship in this situation being substantially the same as between Textile Workers Union of America and its local union.

But the term "constituent unit" does not aptly describe the relationship between Textile Workers Union of America and the C. I. O.; whereas the term "affiliate" does. Thus the C. I. O. Constitution refers to unions such as Textile Workers Union of America as being "affiliated." The C. I. O. delivers to such unions a "certificate of affiliation." Indeed, as has been noted hereinabove, the Board refers to Textile Workers Union of America as "affiliated" with the C. I. O. (Board's Petition p. 2 & 3 and

Board's Brief p. 18). Nor is the word "affiliate" to be regarded as having been put in the statute without purpose and as mere surplusage.

Therefore, the term "affiliate," having been put into the statute for the purpose of referring to some relationship between labor organizations, and it not being a word appropriate to describe any of the typical relationships except that between the national or international union, such as Textile Workers Union of America, on the one hand and the C. I. O. and A. F. L. on the other—it follows that the C. I. O. and A. F. L. are the national labor organizations referred to in the relationship described by the word "affiliate," they being the one side of such relationship of affiliation and labor organizations such as Textile Workers Union of America being the other.

Elsewhere in the statute the matter is further resolved. Section 10 (c) provides that:

> "In determining whether a complaint shall issue . . . the same regulations and rules of decision shall apply irrespective of whether the labor organization affected is affiliated with a labor organization national or international in scope."

The Board concedes (Board's Brief p. 111-112) that in this Section the phrase "labor organization national or international in scope" includes and refers to the C. I. O. and A. F. L. Thus, says the Board, Congress is referring to the C. I. O. when it uses the words "labor organization national in scope" but is not referring to the C. I. O. when it uses the words "national labor organization"! It is respectfully submitted that in the final analysis the Board's contention on this matter comes hardly to anything more worthy than a play on words.

D. *Such Legislative History as There Is on the Subject Supports the Decision of the Court Below and Not the Ruling of the Board.*

The Board seems to rely on the legislative history of Section 9 (h) as substantiating its contentions on the question here at issue. It can hardly do so with any enthusiasm, however, in view of its admission in the *Northern Virginia Broadcasters* decision that:

> "Although it is possible to extract a few quotations from the Congressional Record and the Committee Reports to support either viewpoint, such quotations all prove, on analysis to be disappointingly peripheral in character. . . . At the very least the sparse legislative history is ambiguous on the subject."
>
> *Matter of Northern Virginia Broadcasters, supra.*

The Board points with some fervor, however, to the post-legislative circumstance[10] that the Joint Committee on Labor-Management Relations, or so-called Watch-Dog Committee, did not officially condemn the *Northern Virginia Broadcasters* decision nor recommend legislation to reverse it. On the other hand, neither did this Committee indicate any approval of the *Northern Virginia Broadcasters* decision, nor did it then recommend any legislation of any sort to Congress.

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[10] The Board also mentions the Presidential veto message as aiding its contentions. It is difficult, however, to see what comfort the Board can derive from the veto message since it was overridden by Congress.

As to the Committee's not suggesting to Congress legislation to overturn the Board's decision, it is entirely reasonable to suppose that the Committee considered the matter would be decided as it should be by the courts and in accordance with Congressional intent.[11] At any rate, it would seem that any effort to divine the considerations which may or may not have influenced a post-legislative committee in actions which it did or did not see fit to take is entirely too speculative a pursuit to be of any material aid in construing a prior-enacted statute.

If post-legislative matters be worth noting, however, the following are of a more positive nature. It appears that the only occasion on which the *Northern Virginia Broadcasters* decision has been discussed on the floor of either branch of Congress was in debate in the Senate on a resolution to reject Reorganization Plan No. 12, which proposed to abolish a substantial part of the independent authority of the Board's General Counsel. In this debate Senator Ellender, one of the Senate conferees who had signed the Conference Report on the Taft-Hartley Act and a member of the "Watch-Dog" Committee, supporting the General Counsel's independent authority and citing his ruling with respect to Section 9 (h) as being correct, said:

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[11] This is exactly the view expressed by the Committee later in commenting on the Board's decision in the *Warshawsky* case, 75 N. L. R. B. No. 154, in which case the Board held that if an international union in compliance with Section 9 (h) filed a petition on behalf of a local union, the Board could disregard the fact that the local union was not in compliance. The Committee stated that it assumed that "the correctness of the Board ruling" would be tested upon the Board's seeking enforcement of an unfair labor practice order "in the United States Circuit Court of Appeals." Report of Joint Committee on Labor-Management Relations, S. Rept. No. 986, 80th Cong. 2d Sess., P. 15.

"Mr. President, until today I have not voted against any reorganization plan which the President of the United States has submitted to the Congress pursuant to the so-called Hoover Commission Reports. . . .

"What the proponents of Reorganization Plan 12 failed to say, however, is that the area in which the Board and the General Counsel are in disagreement is with respect to cases in which the General Counsel has taken a position in favor of vigorous enforcement of the Act. But it is in those very few cases that the Board is refusing to carry out the mandate of Congress by giving full effect to the provisions of the new law to the extent that it modified the one-sided character of the Wagner Act. Let me give the Senate one illustration:

"One of the major provisions in the Taft-Hartley Act is the Section which denies the facilities of the Labor Board to labor organizations or any organizations affiliated with them unless all the officers file affidavits disclaiming membership in or sympathy with the Communist Party.

"When the Act went into effect, Mr. Denham the General Counsel of the Board, ruled that the requirement for signing Communist disclaimers applied not only to the officers of particular unions but to all officers of the A. F. L. and C. I. O. Indeed, it is difficult to see how he could have made any other ruling. . . . The Board, however, reversing Mr. Denham, held in the *Northern Virginia Broadcasters* case that this requirement applied only to constituent

unions of the A. F. L. and C. I. O. and not to the top officers. As a result, many C. I. O. unions were permitted to file charges and petitions for election with the Labor Board even though the top officialdom of the C. I. O. . . . were not in compliance with the Act."

Cong. Rec. Vol. 96,
No. 94, May 11, 1950,
P. 6955.

On the same afternoon, and shortly after Senator Ellender thus upheld the ruling of the Board's General Counsel and attacked the *Northern Virginia Broadcasters* decision, the Senate rejected the Reorganization Plan by a vote of 65 to 18. Cong. Rec. Vo. 96, No. 94, May 11, 1950, P. 6979.

Similarly, Representative Hartley, Chairman of the House Committee on Education and Labor and also a member of the Watch-Dog Committee, after the *Northern Virginia Broadcasters* decision wrote with respect to that decision:

"Lest there be any doubt as to what we meant when we wrote that Section, I want to put down here exactly what I had in mind and also report that not a single member of the House Labor Committee or the joint House-Senate Conference Committee ever indicated that it meant anything else.

"I meant that no local union could petition for an election or file an unfair labor practice charge unless the officers of that local *and* the officers of the international union *and* the officers of whichever of the two major labor organizations the international was af-

filiated with, had filed non-communist affidavits. Putting it specifically, I meant that no U. A. W. local could use the Board's processes unless its officers, the international U. A. W.'s officers and all the C. I. O. officers at C. I. O. headquarters had complied with the law.

"The National Labor Relations Board ruled differently. In a decision remarkable for its twisted logic the Board held that the officials of the A. F. L. and C. I. O. national offices were not officers of an "affiliated" organization. As a result, the two national labor organizations we wanted most to reach were beyond reach of the law we wrote for that purpose. . . .

"I would not be so concerned over this particular decision if it were not for the precedent it established for circumventing the clear intent of Congress."

Hartley: "Our New National Labor Policy," Funk & Wagnalls Company, p. 162-163.

E. *Construing the Statute Is Not the Board's, But the Court's "Task."*

Lastly the Board contends (Board's Brief 134) that "the task of construing" the statute "has been assigned primarily" to it and that the test, in determining whether its construction shall be sustained, is "reasonableness and not rightness."

To this the first answer is that it is not agreed that the Board's interpretation of the statute is either reasonable or right. On the contrary, the Respondent earnestly

insists that the Board's interpretation is thoroughly wrong and thoroughly unreasonable, for all the reasons hereinabove set forth.

In the second place, it is not agreed that the question at issue involves any statutory ambiguity. As hereinabove shown the only ambiguities are those which the Board has undertaken to create.

Finally, the Respondent would take issue with the proposition that "the task of construing" the statute "has been assigned primarily" to the Board. The Board cites as authority for this assertion on its part *National Labor Relations Board vs. Hearst Publications*, 322 U. S. 111, 130. It would seem that the Board can hardly rest its position in this respect on *National Labor Relations Board vs. Hearst Publications*, in view of the subsequent Taft-Hartley amendments to the Act and the central legislative history relating thereto. In the Conference Report on the Taft-Hartley Act, the House Managers said:

> "In many instances deference on the part of the courts to specialized knowledge that is supposed to inhere in administrative agencies has led the courts to acquiesce in decisions of the Board even when the findings concerned mixed issues of law and of fact *(National Labor Relations Board vs. Hearst Publications, Inc.)* . . .
>
> "While the Administrative Procedure Act is generally regarded as having intended to require the courts to examine decisions of administrative agencies far more critically than has been their practice in the past, by reason of a conflict of opinion as to whether it actually does so, a conflict that the courts

have not resolved, there was included both in the House Bill and the Senate Amendment, language making it clear that the Act gives to the courts a real power of review.

"It is believed that the provisions of the conference agreement relating to *the courts' reviewing power will be adequate to preclude such decisions as those in . . . the Hearst* (and other) cases, supra, without unduly burdening the courts."

H. Rept. No. 510,
80th Cong., 1st Sess.,
P. 55-56.

As summarized by the Court of Appeals in *Pittsburg Steamship Company vs. National Labor Relations Board:*

"The conclusion that the Administrative Procedure Act and the Taft-Hartley Act were intended to effect a change in procedure before the Board and to create *more effective judicial review* is inescapable in the light of the legislative history."

Pittsburg Steamship Company vs. National Labor Relations Board, 180 F. 2d 731, affirmed by this Court 340 U. S. 15.

The Administrative Procedure Act provides that:

"So far as necessary to decision and where presented the reviewing court shall . . . *interpret* constitutional and *statutory provisions* . . . " (emphasis supplied).

Administrative Procedure Act,
5 U. S. C. A. 1009 (e)

Nor would it seem that the Board could regard the recent decision of this Court in *Universal Camera Corporation vs. National Labor Relations Board*, October 1950 Term, No. 40, which the Board cites, as in any wise tending to restore to it the finality of judgment which the Taft-Hartley amendments specifically undertake to restrict.

It is respectfully submitted that "the task of construing" the statute here in question has not been "assigned primarily" to the Board but to the courts, as the construction of statutes has ever been. And certainly it is the task and prerogative of this Court to decide whether, in the light of all the circumstances set forth herein, this statute was properly subjected to the "construction" which it has received at the hands of the Board.

II

SINCE THE BOARD SEEKS TO ENFORCE AN ORDER AGAINST THE RESPONDENT, THE RESPONDENT IS ENTITLED TO HAVE THE COURT DETERMINE WHETHER THE STATUTE DID OR DID NOT PERMIT THE ISSUANCE OF THE COMPLAINT ON WHICH THE ORDER IS BASED.

A. *The Board Cannot Now Raise the Contention That Its Construction of the Statute Is Final and Unreviewable and That Its Exceeding of Its Statutory Authority Is No Defense to the Respondent.*

The Board in its Brief (e. g. p. 29) now asserts that its interpretation of the Statute on the matter here in question is "final" and not subject to review by this Court

and that in any event a misinterpretation or disregard of the statute by the Board is no defense in the Respondent's hands against the Board's order. It might be remarked that these contentions are at least not lacking in temerity. Otherwise, it is submitted, they have no merit or virtue of any sort.

In the first place, it is important to note that these contentions have not heretofore been raised by the Board in any way. Indeed, to the contrary, the Board in its Brief in the Court of Appeals (p. 52) said:

> "We have assumed throughout this Brief that the filing requirements . . . are 'jurisdictional,' and that Respondent has standing to raise the issue of the effect of the C. I. O.'s failure to file."

Nowhere in its Petition to this Court for Writ of Certiorari did the Board mention any such issue or contention as it now undertakes to make. Therefore, under the express provisions of the Rules of this Court consideration of such contention is now precluded:

> "Only the questions specifically brought forward by the Petition for Writ of Certiorari will be considered."
>
> *United States Supreme Court Rules*. Rule 38 (2).

This Court has uniformly adhered to this principle.

"Our consideration of the case will be limited to the questions specifically brought forward by the Petition."

General Talking Pictures Corporation vs. Western Electric Company, 304 U. S. 175, 58 S. Ct. 849, 82 L. Ed. 1273, also *Trailmobile vs. Whirls*, 331 U. S. 40, 67 S. Ct. 982, 91 L. Ed. 1328.

In petitioning this Court the Board declared (Petition for Writ of Certiorari p. 2) that:

> *"The question presented* is whether the Board properly issued a complaint upon a charge filed by an international union affiliated with the C. I. O. at a time when the officers of the international had filed .... but the officers of the C. I. O. had not." (emphasis supplied).

The Board prayed (Petition for Writ of Certiorari, p. 1) the Court to issue a writ of certiorari "to review the decision of the United States Court of Appeals for the Fourth Circuit" *on this question*. Yet now, completely reversing itself, the Board argues that it has itself spoken the final word on this question and that *what it asked this Court to review is not subject to review!* Instead the Board asks the Court to uphold it in a contention which the Court below did not pass on *(Trailmobile Company vs. Whirls, supra)* and was not asked to pass on and which the Board did not mention when it asked this Court to take the case.

It is significant that this new position on the part of the Board is also in marked contrast to the distinctly tentative state of mind which it expressed at the time it ruled on the question here at issue. In the *Northern Virginia Broadcasters* decision the Board, quite differently, said that it would undertake

> "to construe the Congressional intent with the materials at hand, until such time as Congress *or the courts* offer us further guidance" (emphasis supplied).
>
> *Northern Virginia Broadcasters, supra.*

Likewise, in the case of *Bethlehem Steel Company Ship Building Division*, decided only last year, the Board said that it

> ". . . is constrained to adhere to the Board's origina view until *the Supreme Court of the United State has had an opportunity to pass on the question*" (emphasis supplied).
>
> *Bethlehem Steel Company,* 89 N. L. R. B. No. 210.

Yet now the Board is quite unwilling for "the Suprem Court of the United States" to have any "opportunity t pass on the question."

B. *There Is No Merit in the Board's Contention That It Construction of the Statute Is Final and Unreview able.*

Even, however, if the Board could now be permitte to raise its contention that its interpretation of the Statut

is final and unreviewable, upon examination such contention is seen to be completely without substance.

The point on which the Board rings the changes and seems chiefly to rely as precluding litigation or judicial review of its ruling is that to permit litigious inquiry into questions of whether there has been proper compliance with the filing requirements of Section 9 (h) would cause entirely too much delay and impede the administration of the Act. To this it might be answered in the first place that inquiry and examination and cross-examination involve delay in any situation but are not merely on that account to be foreclosed.

However, as to the Board's detailed enumeration of the complications and delays which would be involved in litigating questions of whether or not compliance with Section 9 (h) had been properly effected, the immediate answer here is that such considerations are irrelevant to this case. The Respondent has not sought at any point in this case to inquire into or litigate any question of whether the C. I. O. properly complied with Section 9 (h); nor does the Respondent seek a review of a Board determination on any such question. Here it is admitted and agreed that the C. I. O. effected no compliance of any sort. And the sole question on which the Respondent asks judicial review is whether the Board correctly interpreted the Statute in ruling that the C. I. O. need make no compliance of any sort.

There is here no delaying litigation, such as the Board envisions, as to whether the proper C. I. O. officers filed affidavits. It is conceded that no C. I. O. officers at all filed affidavits (Board's Petition p. 2 and 3 and Board's Brief p. 18). There is here no entangling inquiry as to

whether the C. I. O. filed affidavits in proper form disclosing correct information and the like. It is conceded that it filed nothing. The single and clear issue is whether the Statute calls for *any* compliance by the C. I. O. in this case—it being stipulated that the C. I. O. made *no* compliance.[12]

Whether the Statute does or does not call for any compliance by the C. I. O. in the present situation is a matter of determining what the Statute means. And the Board by expounding upon the virtues and necessity of "administrative discretion" cannot deter the Court from its function and responsibility of statutory construction. The question is whether the Statute forbids the Board in a case such as the present to issue a complaint so long as the Board is saying to the C. I. O. that it

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[12] In this connection it is to be noted that the Board relies on *National Labor Relations Board vs. Greensboro Coca-Cola Bottling Company*, 180 F. 2d 840 (C. A. 4), *National Labor Relations Board vs. Red Rock Company*, 186 F. 2d, 27 L. R. R. M. 2355 (C. A. 5) and *National Labor Relations Board vs. Wiltse* decided March 23, 1951 (C. A. 6). Why it does so is somewhat of a mystery. For the *Greensboro Coca-Cola Bottling Company* and the *Red Rock Company* decisions were rendered respectively by the same courts which decided the instant case and the *Postex* case; and in the *Wiltse* case the court emphasizes the very distinction which the Respondent now urges.

> "While the *Highland Park* case is cited by respondent as authority in the instant case, it is not here applicable for the same question is not before this court. The issue here is whether compliance with Section 9 (f), (g), and (h) of the Act are jurisdictional and must be shown before the Board has jurisdiction to proceed. Judge Parker, who wrote the opinion of the court in the *Greensboro Coca-Cola Bottling Co.* case, *supra*;

need make no compliance with the Statute. More specifically the question is whether the Board had any power or authority under the Statute to issue the complaint in this case or whether in doing so, as expressed by the court in *National Labor Relations Board vs. Cheney California Lumber Company*, 327 U. S. 385, the Board "traveled outside the orbit of its authority so that legally speaking there is no order to enforce."

The Board's present contention is that whether it exceeded its statutory authority is for *it* to determine—and determine *conclusively* without review by any court! This is indeed a far cry from what this Court envisioned when it orginally upheld the validity of the National Labor Relations Act:

> "The Act establishes *standards to which the Board must conform*. . . . The order of the Board is subject to review by the designated court and only when

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(Footnote 12 continued)

holding compliance not jurisdictional, as well as in the *Highland Park* case, was obviously of the view that the two cases were concerned with entirely different issues, with which conclusion we are in accord."

National Labor Relations Board vs. Wiltse, supra.

The same distinction is made in the *Red Rock* case:

"This is not to hold that if, on a petition for enforcement, it is made to appear to this Court by clear and positive proof that the Board has, contrary to the Statute, taken jurisdiction of a charge made by a non-complying union, particularly one which has not complied with Sec. 9 (h), the filing of the non-communist affidavit, and has ordered a respondent to recognize and bargain with it, this court would enforce the Board's order. On this record, that question is not before us."

National Labor Relations Board vs. Red Rock Company, supra.

sustained by the Court may the order be enforced. *Upon that review all questions of the jurisdiction of the Board and the regularity of its proceedings, all questions of Constitutional right or statutory authority are open to examination by the court.*" (emphasis supplied).

National Labor Relations Board vs. Jones & Laughlin Steel Corporation, 301 U. S. 1, 47.

And as more recently emphasized by this Court:

"When Congress passes an act empowering administrative agencies to carry on governmental activities, *the power of those agencies is circumscribed by the authority granted. . . . The responsibility of determining the limits of statutory grants of authority in such instances is a judicial function entrusted to the courts. . . .*"

Stark vs. Wickard, 321 U. S. 288, 309-310.

"An agency may not finally decide the limits of its statutory power. That is a judicial function."

Social Security Board vs. Joseph Nierotko, 327 U. S. 358, 369 and see also *Addison vs. Holly Hill Fruit Company*, 322 U. S. 607, 616.

In the Administrative Procedure Act Congress has expressly stipulated that:

"It (the reviewing court) shall . . . hold unlawful and set aside agency action, findings and conclusions

found to be . . . in excess of statutory jurisdiction, authority or limitation or short of statutory right . . . (or) without observance of procedure required by law."

Administrative Procedure Act,
5 U. S. C. A. 1009 (e).

The Congressional Joint Committee on Labor-Management Relations has clearly indicated that it regards rulings by the Board as to the extent and coverage of Section 9 (h) to be reviewable by the courts. In commenting on the decision of the Board in the *Warshawsky* case the Committee said:

"The Textile Workers Union of America and Hosiery Workers both affiliated with the C. I. O. have instructed their locals not to do any filing with the Board. . . . Under the ruling of the *Warshawsky* case, their locals may have cases processed by the Board without having complied with the filing and affidavit requirements. *A test of the correctness of the Board rule may be made upon an employer's refusal to bargain, thus raising the question when the Board seeks enforcement in the United States Circuit Court of Appeals.*" (emphasis supplied).

Report of Joint Committee on
Labor-Management Relations
S. Rept. No. 986, 80th Cong.
2d Sess., P. 15.

C. *There Is No Merit in the Board's Contention That Its Exceeding of Its Statutory Authority Is a Defense Unavailable to the Respondent.*

The Board next says, however, that even if it wrongly construed the Statute and exceeded its statutory authority in issuing the complaint in this case, still the Respondent cannot raise such matters as a defense to itself against the Board's order. This, of course, is essentially another way of saying that the Board's ruling on the question at issue is final, conclusive and unreviewable and cannot be examined by anybody anywhere. For if the Respondent in the case cannot raise the question or get it reviewed, then, of course, it will not be raised or reviewed.

In support of this proposition the Board says that if the Respondent was guilty of an unfair labor practice (which the Respondent denies and which the Court below did not decide), the wrongdoing is not wiped out by any statutory misinterpretation or exceeding of authority on the part of the Board and it would be too much of a "windfall" to the Respondent to allow it to raise such matters as a defense against the Board's order. In short, if the Respondent is a wrongdoer under the Act, it must submit to any order the Board issues, whether lawful or unlawful!

If the Respondent committed an unfair labor practice but no one ever filed a charge against it, could the Board nevertheless proceed to an order and upon the Respondent's challenging the order on the ground that no charge was ever filed, could the Board successfully argue that the absence of a charge was a mere "windfall" to the Respondent and that the Respondent being a wrongdoer under the

Act it could not raise such matter as a defense against the Board's order? [13] The fact that a Grand Jury which returned a bill of indictment was not properly constituted may be a "windfall" to a person accused of crime but it is certainly a matter which he is, and should be, entitled to raise.

Next the Board suggests the consideration that if a union files a charge and the Board declines to issue a complaint on the ground that the union has not complied with Section 9 (h) the union can get no judicial review of such ruling. Therefore, says the Board, it would not be fair that the Respondent should have any review of the Board's ruling in the present case. As to this it is hardly necessary to point out that a statute in order to be valid need not operate on all parties in the same manner at all points. For many years the National Labor Relations Act "operated on" employers exclusively.

Moreover, if an employer files a charge against a labor organization and the Board declines to issue a complaint upon the ground, for example, that interstate commerce is not involved, the employer has no right to judicial review of such ruling. Would the Board argue that, therefore, in a case where it does issue complaint and proceed to an order, against a labor organization, then, since the employer had no right to a review, therefore, the Respondent labor organization should have no right to obtain review of the question as to whether interstate commerce was involved in the case?

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[13] Likewise, for example, if a charge were filed and accepted by the Board in disregard of the six-months limitation prescribed in the Act, the same reasoning would apply.

It is neither unreasonable nor unusual that various matters may be brought to court review only by one who is defending himself—and by him only in a proceeding in which it is sought to subject him to a final order. For example, if an employer moves before the Board to dismiss a union's petition for certification upon the same ground that the Respondent moved before the Board to dismiss the complaint in this case, it seems clear that such employer is not entitled to any judicial review of a Board ruling against his motion—until and unless the time comes that he, like the Respondent, is faced with enforcement of an order entered in a complaint proceeding.

The Board points out that Section 9 (h) was not enacted for the purpose of "conferring rights or benefits upon employers" and that therefore the Respondent has no "legal interest" in whether the Board misconstrued the Statute and exceeded its authority in issuing a complaint against the Respondent. It is, of course, true that the purpose of Section 9 (h) was not to create litigable defenses for employers but to weed Communist influence out of the labor movement for the benefit and welfare of the general public, as has been hereinabove emphasized. It certainly does not follow, however, that an employer cannot defend himself against a Board order by showing that the Statute has been disregarded. Rather it would seem to aid and serve the ends of the Statute if an employer in defending himself is able to show that the Statute's purpose and directive have been violated in his case.

The Board points to such cases as *Perkins vs. Lukens Steel Company*, 310 U. S. 113 and *Alabama Power Company vs. Ickes*, 302 U. S. 464 as authorities to the effect that one who wishes to see the laws properly enforced does

not on that account have any standing to maintain an action for the construction or enforcement of a statute. That principle has no application, however, to the Respondent in its present position.[14]

In the *Lukens Steel Company* and *Alabama Power Company* cases the plaintiffs instituted equitable actions to compel the administrative agencies involved in those cases to confine their actions to what the plaintiffs alleged to be the statutory limits under which the agencies should function. In neither case had the plaintiff been, nor was it about to be, subjected to any directive or order as a result of any alleged exceeding of authority on the part of the administrative agency. The only injury asserted by the plaintiffs was that in the one case, *Lukens Steel Company*, a prospect of profitably doing business with the Government and in the other, *Alabama Power Company*, a hope of more profitable business with the public generally, would be prejudiced by the manner in which the administrative agency was exercising its authority.

The Respondent's position is very different from that of the plaintiffs in those cases. An order has been entered by the Board which is not general to the public but which operates upon the Respondent solely and individually. The Board is seeking enforcement of that order against the Respondent solely and individually. If the order is enforced, the pains and penalties of any failure to fulfill it

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[14] The Respondent would, for example, undoubtedly have been held to have no legal standing if it had sought to enjoin the Board from rendering the *Northern Virginia Broadcasters* decision or had it sought to enjoin the Board from carrying out such decision in that case.

will fall on the Respondent and no one else.[15] If in such situation the Respondent does not have a "legal interest" in being allowed to show that the Board was without statutory power or authority to enter the order against the Respondent, then it is difficult to understand who ever could have a "legal interest" in any case.

III

THE COMPLAINT HAVING BEEN ISSUED IN DISREGARD OF THE STATUTE, THE BOARD'S ORDER CANNOT BE ENFORCED ON ANY THEORY THAT THE UNION'S "DISABILITY" HAS BEEN "CURED."

The Board says that despite its rulings that the C. I. O. need not do so, the C. I. O. did on December 22, 1949, comply with the filing requirements of Section 9 (h). Upon which the Board makes the final suggestion that if all its contentions, hereinabove discussed, be overruled, still its order in this case should be held valid because the C. I. O., after the issuance of the order, did comply with the Statute.

This proposition, like the Board's contention that its ruling in the case is final and unreviewable by the courts and that any exceeding by the Board of its statutory

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[15] The successful complainants in *Stark vs. Wickard, supra*, certainly had a far less direct and tangible interest in the matter being litigated than is the case with the Respondent here. See also *Federal Communications Commission vs. Sanders Bros. Radio Station*, 309 U. S. 470, 476.

authority cannot be raised by the Respondent, comes for the first time in the Board's present Brief. The Court below had no opportunity to pass on any such contention because no such contention was made in that Court. Likewise it was not raised in the Petition by which the Board obtained entry into this Court. Therefore, under the express rules and the uniform decisions of the Court, hereinabove set forth, this new contention on the part of the Board cannot be considered.

The contention now being discussed seems indeed to have been so negligible to the Board, or so completely an after-thought with it, that it does not see fit to designate the matter even in its present Brief as one of the "Questions Presented" (Board's Brief p. 2) nor as among the "Specifications of Error to be Urged" (Board's Brief p. 18). This too is in disregard of the specific Rules of this Court. Rules of the United States Supreme Court, Rule 27 (2) (e), 28 U. S. C. A.

If, however, the Board's present contention could now be considered, it is to be noted that the factual proposition on which it rests has no basis anywhere in the record. Compliance with the statute on the part of the C. I. O. is not properly before the Court upon a bare statement in the Board's Brief that such compliance occurred.[16]

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[16] The date on which the Board says the C. I. O. complied, that is, December 22, 1949, was some six months after the Board had entered its final order in this case. 84 N. L. R. B. 744. That date was also some six months before the Court of Appeals heard this case; yet, as has been noted, the Board made no mention of its present contention to that Court.

Apart from all this, however, the basic answer to the point which the Board now seeks to make is that, as has been shown hereinabove, since the Statute required compliance by the C. I. O. and the C. I. O. had not complied, the complaint was issued without statutory authority, and indeed in violation of the statute's express and positive prohibition, and had no more legal validity than if the Board had never been created. In the eyes of the law the complaint and the order were a nullity. Having been stillborn, life could certainly not be breathed into them six months later.

The Board overlooks the total invalidity of its complaint when it undertakes to treat the situation as simply one in which the union was under a "disability" which has now been removed and the authorities it cites on the subject of "retroactively curing a disability of plaintiffs to sue" entirely miss the mark. The situation is not one of infirmity which might be "cured" but, rather, one in which legally, life never existed. There is no "cure" in the latter situation.

Instead of being analogous to cases in which a civil suit is brought by a plaintiff under a disability, the present case is much more similar to situations in which an act of Congress has placed certain limitations upon the jurisdiction of a court or prescribed a fixed time limitation, in which situations it is held that an action commenced without regard to such limitations must be dismissed even though events have subsequently occurred which purport to bring the case within the stipulated limitations. *United*

States ex rel Portland Cement Co. vs. McCord, 233 U. S. 157. See also *American Bonding & Trust Co. vs. Gibson County*, 145 Fed. 871, 874 (C. A. 6), *Morgan Heirs vs. Morgan*, 15 U. S. 290.

The Board, of course, uniformly maintains that an order issued by it does not become moot, and enforcement of it should not be withheld because it has been obeyed or because since the order was issued, events have occurred making its directives unnecessary. *National Labor Relations Board vs. Pennsylvania Greyhound Lines*, 303 U. S. 261. If an order totally valid when issued does not become invalid or unenforcible because of subsequent occurrences, then by the same standard, an order totally invalid when issued does not become valid because of subsequent occurrences.

The Board argues, however, that the complaint ought not to be dismissed for if it were, says the Board, the General Counsel of the Board "could now issue an unassailable complaint" (Board's Brief p. 137) and take the case back through all its proceedings until the Board would be back before the courts with a new order "identical" to the one now in question. The problem of whether a new complaint would be "unassailable" is, of course, a bridge which can be crossed only when and if it is reached. And the Board has no means of knowing, any more than the Respondent, what the pertinent and controlling circumstances may then be.

It should be observed at this point, however, that, according to the Board's own statements, it is a matter of very reasonable possibility that the very non-compliance

which vitiated the present complaint will be in existence at the time the Board might hereafter undertake to issue a new complaint. Both in its Petition for Writ of Certiorari (p. 7) and in its Brief (p. 63) the Board emphasizes that "a compliance status once achieved does not necessarily continue for any definite period of time" and that there is "no assurance" that the C. I. O. "will continue to file" the affidavits required by Section 9 (h). Indeed, although the Board asserts in its Brief that the C. I. O. complied with Section 9 (h) on December 22, 1949, nowhere does the Board say or claim that the C. I. O. is in compliance at the present time! Thus, on the subject of compliance alone the Board's announcement that it can hereafter issue an "unassailable" complaint is no more than speculation and conjecture.[17]

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[17] Likewise, the Board's statement that "a dismissal of the complaint" would "leave outstanding the original charge" (Board's Brief 137) is a novel and doubtful proposition. Heretofore a dismissal of a complaint has uniformly involved the dismissal of the charge on which it is based. If a charge is to be regarded as still alive after the dismissal of a complaint, then the statute of limitation provided in the Act is, in such situation, certainly set at naught.

Furthermore, if the decision of the Court below is sustained, then the Board concedes that the charge here involved was a non-complying charge up until December 22, 1949. The Board dismissed many charges for non-compliance during the period from the effective date of the Act to December 22, 1949. Therefore, other non-complying charges during that period having been dismissed, it would seem a palpable discrimination if the present charge, equally non-complying during the same period, instead of being dismissed, should be made the basis of a new complaint.

More fundamentally, however, it is indeed startling legal argument that an invalid complaint should not be dismissed because perchance a valid complaint could be or might be filed. The law would indeed be a loose and uncertain affair if cases were adjudicated on the basis of what might have been or what might be. In any court known to this Respondent a prosecutor, for example, would have short shrift were he to stand and argue that although the bill of indictment which he had presented to the court was invalid, still it should not be dismissed because he felt sure that he could come again with a valid one! And the Board's contention to the same effect, even if it could now be considered, is equally unsound.

Upon all the authority and reasoning herein set forth, the Respondent earnestly contends that the decision of the Court below was correct and should be affirmed.

Respectfully submitted,

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Charlotte, North Carolina

APPENDIX I

Excerpts from printed Transcript of Record on File with this Court in Case of *Congress of Industrial Organizations vs. McAdory*, 325 U. S. 472, 65 S. Ct. 1395, 89 L. Ed. 1741:

IN THE CIRCUIT COURT, TENTH JUDICIAL CIRCUIT OF ALABAMA

Congress of Industrial Organizations, an Unincorporated Association; Philip Murray, Individually and as President of said Congress of Industrial Organizations; Alabama State Industrial Union Council, an Unincorporated Association; Carey Haigler, Individually and as Secretary of said Alabama State Industrial Union Council; United Steel Workers of America, an Unincorporated Association; David McDonald, Individually and as Secretary-Treasurer of said United Steel Workers of America; International Union of Mine, Mill & Smelter Workers, an Unincorporated Association; Reid Robinson, Individually and as President of said International Union of Mine, Mill & Smelter Workers; Textile Workers Union of America, an Unincorporated Association; Emil Rieve, Individually and as President of said Textile Workers Union of America; Local Union No. 1015 of the United Steel Workers of America, an Unincorporated Association; Hoyt Brant, Individually and as President of said Local Union No. 1015; Local Union No. 2971 of the United Steel Workers of America, an Unincorporated Association; William Nathan, Individually and as President of said Local Union No. 2971; Local Union No. 2382 of the United Steel Workers of America, an Unincorporated Association;

R. C. Scruggs, Individually and as President of said Local Union No. 2382, Complainants,

vs.

Robert E. McAdory, as Solicitor of Jefferson County, Alabama; and Holt McDowell, as Sheriff of Jefferson County, Alabama, Respondents

BILL OF COMPLAINT AND PETITION FOR DECLARATORY JUDGMENT, INTERLOCUTORY AND PERMANENT INJUNCTION—

Filed August 11, 1943.

To the Honorable Judges of the Tenth Judicial Circuit of Alabama, in Equity Sitting:

Humbly complaining come the complainants and respectfully show unto this Honorable Court the following facts:

1. At all times herein mentioned the Congress of Industrial Organizations was and now is a voluntary and unincorporated association composed of numerous voluntary and unincorporated associations or labor unions, the said affiliated associations having an aggregate membership of several million persons in all States of the United States, and in Canada, including officers and several thousand members in Jefferson County, the State of Alabama, and all of said members are classified according to their various trades and industries into separate, voluntary and unincorporated associations or Labor Unions. The Congress of Industrial Organizations maintains its principal office in the City of Washington, District of Columbia. The complainant Philip Murray at all times herein mentioned was and now is a member of a labor union affiliated with

the said Congress of Industrial Organizations and was and is the duly elected, qualified and acting President of the said Congress of Industrial Organizations.

(Record P. 1-3)

* * *

5. At all times herein mentioned the Textile Workers Union of America was and now is a voluntary association of employees employed in textile plants and has many thousands of members in numerous States of the United States, including thousands of members in the State of Alabama and in Jefferson County, Alabama. It is affiliated with the Complainant Congress of Industrial Organizations. Its members are organized into autonomous subdivisions known as local unions, a number of which consist in whole or in part of persons, more than twenty-five in number, who are residents of the State of Alabama, and work in the State of Alabama.

(Record P. 4-5)

* * *

9. All Complainant unincorporated associations are organizations and associations of employees, including employees working in the State of Alabama, and including employees working in Jefferson County, Alabama, in various trades, occupations and industries who have from time to time assembled and associated together and are assembling and associating together for the purpose of organizing themselves into voluntary and unincorporated associations and for the purpose of forming, joining and assisting their organizations so formed, including the complainants herein named, to bargain collectively through representatives of their own chosing and to engage in concerted activities for the purpose of collective bargaining

and otherwise dealing with their employers concerning hours of employment, rates of pay, tenure or other terms or conditions of employment, grievances of any kind relating to employment, and for other mutual aid and protection. The members of Complainant unincorporated associations are not subject to the Act of Congress known as the Railway Labor Act.

10. The said employees have associated and assembled and formed voluntary associations, named herein as complainants, and other labor unions affiliated with the said complainants for the following activities necessary to the effectuation of the foregoing purposes:

(a) Exchanging and discussing among and between themselves ideas and information related to the foregoing purposes and arriving at mutual and common decisions;

(b) Disseminating to the public, to fellow employees who have not joined in the association and to public officials and representatives of government, both of the various states, including Alabama, and of the United States facts, information and opinions concerning the said association, its purpose and objectives and the problems of its members and of wage earners generally, the benefits of the National Labor Relations Act, the Railway Labor Act, and other Federal statutes and the rights granted thereby;

(c) To cement the interest of organized labor and of employees in individual trades and industries for their mutual protection, to establish fraternal relations among such employees, to insure harmonious cooperative action, to protect and promote the rights, privileges and immunities of the wage earners and the general welfare of labor organizations and em-

ployees represented by and affiliated with the complainants and of labor generally, and to increase the dignity of labor and elevate it to a higher level of good citizenship.

(Record P. 7-8)

* * *

13. In the effectuation of the purposes aforementioned it is the necessary objective and practice of labor organizations and of the complainants herein mentioned and their affiliates to negotiate and bargain with persons employing members of such organizations with respect to wages, hours, tenure, and other terms and conditions of employment of the members of said unions and pertaining to other matters affecting or threatening the economic standards and the mutual welfare of the members of said union and to arrive at mutual agreements embodied in collective bargaining contracts with said employers.

(Record P. 9)

* * *

Labor organizations, including the complainants in the present action, are accountable to and do account to members of such organizations for all funds received, possessed and handled by such organizations. The facts respecting the extent of and the distribution of the funds of a labor organization, including the complainants herein, are not, except by common consent of the members in accordance with the rules governing the operation of the organization as adopted by the members, made known to employers of members of the said organizations. The disclosure of such information to employers and to persons with interests adverse to those of the complainants would be detrimental to the best interests of the members of said

organizations and to the achievement of the purposes and objectives herein set forth.

(Record P. 12)

* * *

22. The members of the complainant unincorporated associations and the officers, agents and employees of the said associations and the members of all other organizations of employees having members who are residents of the State of Alabama and organized for the purpose of dealing with employers concerning hours of employment, rates of pay, working conditions, or grievances of any kind relating to employment and the officers, agents and employees of such organizations constitute a class situated similarly to the complainants herein with respect to the matters herein alleged and are so numerous as to make it impractical or impossible to bring them all before this Court, but the rights and interests of all persons with respects to the thing and matters in this complaint alleged are fairly represented by the complainants herein who bring this suit for and on behalf of themselves and all other organizations and persons similarly situated.

(Record P. 14-15)

* * *

Be It Enacted by the Legislature of Alabama:

Section 1. Declaration of Policy. The right to live involves the right to work. The public and working men and women must be protected. The activities of labor organizations affect the social and economic conditions of the State and the welfare of its citizens. It is declared to be the policy of this State, in the exercise of its police power and in the protection of the public interest, to promote voluntary and peaceful settlement and adjustment of

labor disputes and to regulate the activities and affairs of labor organizations, their officers, agents, and other representatives in the manner and to the extent hereinafter provided.

Section 2. When used in this Act, the terms defined shall have the meaning here ascribed to them unless it clearly appears from the context that some other meaning is indicated: (a) "Labor Organization" or "Labor Union" shall mean every organization, association, group, union, lodge, local, branch, or subdivision thereof, whether incorporated or not, having within its membership employees working in the State of Alabama, organized for the purpose of dealing with employer or employers concerning hours of employment, rates of pay, or the tenure or other terms or conditions of employment, but such term or terms shall not include any labor organization, or labor union the members of which are subject to the Act of Congress known as the Railway Labor Act.

(Record P. 62)

* * *

Testimony of John Brophy

The complainants then offered the following testimony:

JOHN BROPHY, a witness called by complainants, being first duly sworn, testified, as follows:

Direct Examination.

By Mr. Harris:

Q. What is your name?

A. John Brophy.

Q. Where do you live?

A. Washington, D. C.

Q. In what business are you engaged?

A. My present position is Director of Industrial Union Councils, which is a central body of C. I. O.

Q. How long have you been connected with the C. I. O.?

A. Since its inception in 1935, December of that year.

Q. Have you devoted all of your time to C. I. O. work since its inception?

A. I have. I was Organizational Director from the inception of C. I. O. up to and including the year 1940, and from then on I have been Director of the Industrial Union Councils.

(Record P. 71-72)

* * *

Q. Mr. Brophy, how long have you been connected with or a member of labor organizations?

A. Forty-five years.

Q. Have you devoted practically all of your time to labor organizations or labor unions and the work of such organizations and associations during the past forty-five years?

A. Yes as a local member of the union I was active in a local way and held various positions, local offices and on committees; and then for the past twenty years I have been engaged in executive work and on a larger scale, that is, matters affecting the union, concerned with organizational activities, collective bargaining and the administration of the contracts after they have been consummated.

(Record P. 72)

* * *

Q. When did you become active in the Congress of Industrial Organizations, the C. I. O. or the predecessor

organization known as the Committee for Industrial Organizations?

A. December, 1935.

Q. Were you one of the organizers of the Committee for Industrial Organization?

A. Yes. I was one of the original Committee that set up the Committee for Industrial Organization.

(Record P. 73)

* * *

Q. Now, as Director of Industrial Union Councils, have you been involved in directing organizing campaigns?

A. Yes, I have. My work has been to advise and counsel in that work.

Q. How about your participation and connection in collective bargaining agreements?

A. I have been engaged in large scale collective bargaining.

Q. In the making of the agreements and administration of unions after agreements have been made?

A. Yes.

Q. Now, when you were a member of the local union, were you active?

A. Yes, very active.

Q. Were you active as an organizer then?

A. Yes. All the local people were active in completing the work of organization in our community.

Q. Now, as Organizational Director and Director of Industrial Union Councils for C. I. O. — Judge, wherever I refer to C. I. O., I mean Congress of Industrial Organizations; its abbreviation is in such general use by habit I call it that — as Organizational Director and Director of Industrial Union Councils for C. I. O., have you

been in rare and in frequent touch with National and local officials or have you been in constant touch with National and local unions, with labor unions affiliated with C. I. O.?

A. I have been constantly in touch with all National unions as to their various activities, with particular reference, of course, to organizing work and also to the collective bargaining program.

Q. Have the officials brought in to you their problems and discussed them with you?

A. Yes.

Q. Have you in turn given them the benefit of your experience with other organizations, other locals, other unions?

A. I have.

Q. And the experience you gathered as a national official of the C. I. O.?

A. Yes.

(Record P. 74-75)

* * *

Q. Could you give the Court a rough estimate of the International unions that are now a constituent part of members of the Congress of Industrial Organizations?

A. About thirty-five National and International Unions comprise the Congress of Industrial Organizations.

Q. How many members approximately would you say your organizations have?

A. Some six million members.

Q. Do they operate in practically every State of the United States, including the State of Alabama?

A. They do.

Q. Just what was the circumstances which gave rise to the Committee for Industrial Organization and later the Congress of Industrial Organizations?

A. The necessity of establishing industrial unions that could pool together the strength and experience for the purpose of effectively advancing the work of organization and establishing collective bargaining. It was the conviction of the original group the industrial union type of this organization was best fitted to cope with modern industry. The development of industry the last score or more of years has been large scale, covering several or more states, and concentrating power in a given industry; and to effectively do the job of organizing and to be able to cope adequately at the bargaining table, it was necessary to have a type of union, the industrial form of union, in order to cope with widespread corporate industrial organization of the employers.

Q. Would you say that the organization of the employers had become larger and more extensive in recent years?

A. Yes, very much so.

Q. From your experience, is it your judgment that such an organization as C. I. O. is a practical necessity in order that workmen, or the employees, may bargain with anything like approximate equality with employers in Alabama?

A. I do, yes.

(Record P. 76-77)

* * *

Q. In the collective bargaining between the C. I. O. and the employer, does the C. I. O. make contracts covering merely a plant, or does it make contracts covering all the employees if possible?

A. The objective of the C. I. O. National Union is to get a collective bargaining contract with all the employees of a given company or corporation, and whenever possible a contract covering all the workers in a given industry. That is the main objective of the C. I. O. unions in their collective bargaining activities.

(Record P. 82)

* * *

Q. How about financial assistance from the National organization of the C. I. O. to the various local organizations?

A. Both financial and advisory assistance is extended from the national C. I. O. to its affiliates.

(Record P. 86)

* * *

Q. Now, is it the professed aim of the C. I. O. to organize not merely the employees of a particular plant but employees of all plants in a particular industry that are operating in the state?

A. It is to organize all the workers engaged in a particular industry.

(Record P. 89)

* * *

Q. By balance of the two forces, you mean balance of bargaining power between the employee on one hand and the employer on the other hand.

A. That is right, of course, I may say this, that under

present conditions, the war emergency, the C. I. O. has given a pledge to refrain from the strike weapon; and the policy of the C. I. O. to observe that pledge of no-strike during the war, of course, that is made possible because of the fact there is an agency, the War Labor Board, to whom disputes, and the failure of settlement, to whom disputes between employer and employee may be submitted and adjudicated.

(Record P. 94)

* * *

Q. Mr. Brophy, has it or not been the policy and custom of the C. I. O. to refuse to handle non-union material?

A. There have been many instances where they have refused to handle non-union material.

Q. Now, as an instrumentality or agency in union work and organization is the power and right to refuse to handle non-union material, and is the exercise of that power, a practical means of strengthening unions?

A. Yes, particularly in the initial stage of organizational activities and the early stages of relationship with the employer.

(Record P. 96)

* * *

Q. That local union, you say, is the nucleus of a possible national union?

A. It is. But I was going to say as an exception. Until such time, which may be long or short, it is responsible directly to the national C. I. O., just as another local union in another industry would be responsible to the National or International Union.

Q. The individual member of that local has his membership in the local?

A. That is right.

Q. And the local, in turn, affiliates directly with C. I. O.

A. That is right.

Q. And the individual member of that local is not himself a member of C. I. O.?

A. Yes; we are all members of C. I. O. It is just in the same sense you may be a citizen of Birmingham and the State of Alabama and a citizen of the United States, so I may be a member of a local union that is affiliated with a National Union that is in its turn affiliated with the C. I. O. We have the overall membership, as it were, in this fraternity of local and national unions.

(Record P. 98-99)

* * *

Q. C. I. O. distinguished from the constituent unions, maintains a treasury of its own, does it not?

A. Yes, it does.

Q. Does any of that money find its way into educational movements?

A. Yes, it does—into all the various educational activities.

(Record P. 101)

* * *

Q. All right. Now then, among the services you render is assistance in negotiating collective bargaining contracts, isn't it?

A. That is true.

Q. Let me understand what function the national C. I. O. itself, as distinguished from its constituent unions,

renders with respect to specific contracts for its members?

A. Certain unions may ask that the C. I. O. representative here in Alabama assist in the negotiating of agreements with certain concerns. They can call on our C. I. O. representatives here in the state, or they can confer with our national officers on the subject and ask for special assistance.

Q. All right. Now, you maintain a staff, do you not, to go around and assist in negotiating contracts?

A. We maintain a staff, some of them are stationed at certain places, and they are available, among other things, to assist in negotiations where such assistance is asked for.

Q. You have here in Alabama such men, do you not?

A. Yes.

Q. Can you put their names in the record, or some of them?

A. Well, for instance, Mr. Haigler is present, he is available for consultation and assistance in negotiations; and there may be others sent in from time to time. They are a changing force, some of our people.

Q. Do you have a field organization you send into various states as they are called for for that purpose?

A. Some of them are permanently located, and others are sent in from time to time, depending on the volume of work and other circumstances.

Q. Are those men paid out of the central treasury or the constituent union treasuries?

A. They are paid out of the central treasury, that is, the direct national representatives. In some of our other units, like the State Council, it would be paid out of the state treasury.

(Record P. 108-109)

* * *

Q. It is the objective of the C. I. O. to make the same rates of pay applicable in Alabama as in Pennsylvania?

A. Yes. The union's objective is to get the same pay for the same class of work whether it be Illinois, Pennsylvania, Alabama or Tennessee. In other words, one worker with the same skill as another is entitled to the same rate of pay.

Q. You classify workers into classes determined by what they do and by their experience and skill in doing that thing?

A. That is right.

Q. The policy of the union is to see each man who falls within the same classification receives the same pay, regardless of the state it is performed in?

A. That is the general objective.

Q. Not only the general objective, it is the policy, isn't it?

A. Yes, sir, policy, objective and policy.

(Record P. 116)

* * *

Q. Now, we have covered, I believe, your education and your legislation, and I believe, your negotiation activities. You also have an activity or political activity department of the C. I. O., do you not?

A. We are interested in political activity, yes.

Q. Well, are any funds of the central treasury of the C. I. O. devoted to political purposes?

A. Well, political purposes is pretty broad, isn't it?

Q. Haven't you a committee called the Political Action Committee of the C. I. O.?

A. Yes, Political Action Committee, of which I am not a member.

Q. How does it get funds?

A. Various ways.

(Record P. 118)

* * *

Q. Now, you told your counsel, or Mr. Harris, this morning that it was the policy of C. I. O. to organize on an industrial basis.

A. Yes.

Q. And that you take a given industry and include in your organization that industry from the bottom rungs of the ladder up?

A. Right.

Q. How far is it your policy to go?

A. Our policy would be to include all workers employed in and about a given industry, exclusive of those in management who have the right to hire and fire.

Q. Does that mean you want the lower ranges of foremen?

A. Yes. We would want them, because they are working men who have a very close relationship to the actual producing workers, and their interests are involved as to wages and conditions and tenure of position, so there is mutuality of interest; and the supervisory force, broadly speaking, it is just slightly glorified producer workers.

Q. It is the policy of the union to include supervisory forces?

A. I have already testified we did.

Q. Is it your policy to include technical workers as well as supervisory employees?

A. Yes.

Q. And clerical workers?

A. Yes.

(Record P. 123-124)

* * *

Q. If they exclude persons who according to the general policy should be included, will that local union be longer allowed to affiliate with C. I. O.?

A. The answer to that is the local union will not exclude those who are eligible to belong to the union. To do that would be to fly in the face of the very policy of the union.

Q. The national policy of the union?

A. That is right.

Q. That matter is determined on a national basis and not on a local basis?

A. In this sense, all workers employed in a given industry are entitled to membership, unless they have to do with company management, unless they have to do with hiring and firing—those are excluded.

Q. Does C. I. O. and its affiliated organizations organize industry that is not engaged in interstate commerce?

A. Well, they organize all workers.

Q. All workers?

A. Yes, there would be some of course.

(Record P. 127-128)

* * *

Q. C. I. O. has a membership in several states of the Union and in the District of Columbia?

A. I imagine it does. It would be hard to find a state which has no C. I. O.

(Record P. 132)

* * *

Q. In other words, you consider it inimical to the interests of the C. I. O. because it has been thought to interfere with the right to contract for a closed shop in Alabama?

A. It is an interference with collective bargaining.

Q. That is that intimidation you spoke about?

A. That is the intimidation the Act imposes upon our workers.

Q. It is true you do not wish to conform to the terms of the Bradford Act, is that it?

A. It isn't a question of conforming. They are under pressure of it, and for that reason C. I. O. is before this Court today in connection with the Act.

(Record P. 133)

* * *

Q. In addition to the activities that you have enumerated of C. I. O. International and National organization, or central organization we will call it, and the Alabama Industrial Union Council, I will ask you if you have enumerated all their activities and interests and efforts carried on here in Alabama?

A. I have, to the best of my memory, unless you refer to the Political Action Committee.

(Record P. 163)

* * *

Q. And in addition to that, you carry on a great deal of organizational work?

A. I do.

(Record P. 164)

* * *

Excerpts from Printed Transcript of Record on File with this Court in Case of *Alabama State Federation of Labor vs. McAdory*, 325 U.S. 450, 65 S.Ct. 1384, 89 L.Ed. 1725:

IN CIRCUIT COURT OF JEFFERSON COUNTY SUBSTITUTED PETITION FOR A DECLARATORY JUDGMENT—
FILED OCTOBER 13, 1943

By leave of the Court first had and obtained the plaintiffs substitute this their petition for a declaratory judgment in this cause making their substituted petition for a declaratory judgment read as follows:

The plaintiffs, Alabama State Federation of Labor; Local Union No. 103, United Brotherhood of Carpenters and Joiners of America; American Federation of Labor; United Brotherhood of Carpenters and Joiners of America; and B. E. Jones, respectively, bring this, their petition against Robert E. McAdory, as Solicitor of Jefferson County, Alabama, and Holt McDowell, as Sheriff of Jefferson County, Alabama, for a declaratory judgment, and as a basis for the relief prayed for respectfully show unto the Court the following statement of facts, to-wit:

(Record P. 1-2)

* * *

2-a. The American Federation of Labor is a voluntary, unincorporated labor organization composed of numerous voluntary, unincorporated associations of labor organizations, the said affiliated associations having an aggregate membership of several million persons in all the states of the United States, including the State of Alabama, and in Canada. All of said members are classified according to their various trades, crafts and industries into separate voluntary, unincorporated associations of labor

unions. Each of them, and the American Federation of Labor, were organized and are maintained and operated for the purpose of dealing with employers concerning hours of employment, rates of pay and working conditions generally, and each having within its membership employees working in the State of Alabama. The American Federation of Labor maintains its principal office in the City of Washington in the District of Columbia.

(Record P. 3)

* * *

AFFIDAVIT OF WILLIAM GREEN

STATE OF OHIO,

County of Coshocton, ss:

WILLIAM GREEN, being duly sworn, deposes and says:

1. I reside at Coshocton, Ohio.

2. I make this affidavit in support of the application of the plaintiffs for an injunction as prayed for in the complaint filed in Montgomery County, Alabama.

3. I am President of the American Federation of Labor (hereinafter called the "A. F. of L.") have been President continuously since December, 1924.

(Record P. 244)

* * *

6. As the President of the A. F. of L., I have been in constant touch with the national and local officials of many of the labor unions affiliated with the A. F. of L. In this manner these officials have brought to me the problems which they have in the course of their normal operations and activities, and I, in turn, have been able to give them the benefit of the experience of the other labor organiza-

tions affiliated with the A. F. of L., together with the experience of the A. F. of L. as a national body and also have given them the assistance of the A. F. of L. in the endeavor to aid and solve their specific problems.

(Record P. 245)

* * *

14. The A. F. of L. is a voluntary and unincorporated association composed of numerous voluntary and unincorporated associations of 'abor unions known as national and international labor unions, state federations, city central bodies, and directly affiliated local unions. The A. F. of L. issues certificates of affiliation to each of such affiliates. Each national and international union affiliated with the A. F. of L. has its own constitution. Each of said organizations issues charters to its respective local unions. Each of said national and international unions affiliated with the A. F. of L. is an organization of employees in particular trades, crafts or industries, organized for the purpose of dealing with employers concerning hours of employment, rates of pay, working conditions, or grievances of any kind relating to employment. The A. F. of L. is, therefore the single organization to which all of these various labor organizations are affiliated for the purpose of securing greater strength to all through the united effort and policies which can be established and achieved through such single national organization. Each affiliated organization of the A. F. of L. has so affiliated itself to be associated with other labor organizations so as to fully develop its own strength and achieve a high degree of organization of the workers within its jurisdiction. Neither the A. F. of L. nor any of its affiliated unions nor any of the local unions

of such affiliates engage in any activity of a commercial nature or in any business conducted for a profit.

(Record P. 246-247)

* * *

19. To effectuate the purposes of the A. F. of L. as set forth in its constitution, the affiliated unions of the A. F. of L. exchange and discuss among and between themselves ideas and information relating to said objectives and arrive at mutual and common decisions, disseminate to the public and to the workers of the nation who have not joined any affiliated organization of the A. F. of L., and to public officers and representatives of the governments of the various States, including Alabama, and of the United States, facts, information and opinions concerning the A. F. of L. and its affiliated organizations, their purposes and objectives, problems of the membership of the A. F. of L. and of the wage earners generally, the benefits of the National Labor Relations Act and other federal and state statutes and the rights guaranteed thereby and the harmful effects to organized labor of any and all legislation which is not considered beneficial to organized labor. In this connection the A. F. of L. maintains an educational program, distributes educational material to its affiliated organizations, maintains a national publication known as "The American Federationists," maintains a national legislative service by which it keeps its affiliated organizations informed regarding Federal and State legislation and proposed legislation. Considerable monies are expended by the A. F. of L. in behalf of such activities.

20. The national office of the A. F. of L. maintains several hundred regional representatives throughout the nation to assist in the uniform operations and policies of

the A. F. of L. and its affiliated unions. These representatives represent the A. F. of L. in their respective regions, assist the affiliated organizations of the A. F. of L. in their respective regions, assist in the organization of new local unions to be affiliated with one of the national or international unions affiliated with the A. F. of L., inform the local unions of the affiliated organizations of the A. F. of L. regarding A. F. of L. policies generally and as they relate to specific problems confronting said local unions, and participate in the solution of such problems where their assistance is sought by local unions or where the interests of the A. F. of L. are involved.

21. The national office of the A. F. of L. from time to time, upon request of the affiliated organizations, assigns organizers to said affiliated organizations throughout the country in the organizing of workers in their organizing activities. Specific or general problems of each of the affiliated organizations of the A. F. of L. are frequently brought to the attention of the national officers of the A. F. of L. in order that they or their associates may assist said affiliated organizations in the solution of such problems.

22. The A. F. of L. is constantly being called upon to render financial assistance or to furnish personnel to assist its various affiliated organizations in their manifold activities both in terms of organizing, collective bargaining with employers, legislative work, and in all of their other activities and pursuits.

23. The national office of the A. F. of L., its officers and representatives, are in constant contact with the affiliated organizations of the A. F. of L. and their local unions through the country and maintain a regular and steady flow of correspondence, communication, and per-

sonal contact through the regional representatives of the A. F. of L. with the personnel of all the affiliated organizations of the A. F. of L. and their respective local unions. The A. F. of L. conveys to the A. F. of L. Unions in Alabama and to all of the A. F. of L. unions throughout the nation the benefit of the experience of the A. F. of L. unions everywhere.

(Record P. 247-248)

* * *

29. In furtherance of the objectives set forth in their constitutions, the national and international unions and their local unions exchange and discuss among and between themselves ideas and information relating to said purposes and objectives and arrive at mutual and common decisions, disseminate to the public and to fellow employees who have not joined in the association, and to public officers and representatives of government of the various states, including Alabama, and of the United States, facts, information and opinions concerning the A. F. of L. and its affiliated unions, their purposes and objectives, the problems of their members and of wage earners generally, the benefits of the National Labor Relations Act and other federal and state statutes and the rights guaranteed thereby, and the harmful effects to organized labor of any and all legislation which is not considered beneficial to organized labor.

(Record P. 250)

* * *

34. On the basis of the experience which I have had during the past fifty years as a union member and union official, and especially as the President of the A. F. of L., I am fully and completely acquainted with the activities

that must be engaged in by every international union and its local unions in connection with the organizing of employees into membership, the administration of the affairs of the international unions and their local unions and their relations with employers. These activities which I shall describe are an integral part of the existence, operation, and functioning of each international union and its local unions. All of the facts which I shall set forth are the same in regard to and are applicable to all of the national and international labor unions affiliated with the A. F. of L. plaintiffs in this action, and their respective local unions and members.

(Record P. 251)

* * *

35. It is the objective of all labor organizations, including the plaintiffs herein, to negotiate and bargain with persons employing members of such organizations with respect to wages, hours and working conditions of the members of said unions and pertaining to the other matters affecting or threatening the economic standards or the mutual welfare of the members of such unions; to obtain collective bargaining agreements with such employers and to secure the interests in such agreements of clauses requiring employees to become and remain members of the labor organization involved.

(Record P. 255)

APPENDIX II

Shortly after the Board's General Counsel ruled that the provisions of Section 9(h) of the Act did extend to the C. I. O. and A. F. L., some of the officers of the C. I. O. announced that they would not file the required affidavits, as did Mr. John L. Lewis, then an officer and Vice-President of the A. F. L.[1] Soon thereafter at a convention of the A. F. L. the A. F. L. Constitution was amended, over Mr. Lewis' vigorous opposition, so as to remove from him and the other Vice-Presidents of the A. F. L. their titles.[2] Prior to the Board's reversal of its General Counsel's ruling, attorneys for the A. F. L. obtained an informal conference with the members of the Board and urged that the General Counsel's ruling be reversed.[3]

Two days later the International Brotherhood of Electrical Workers, a Union affiliated with the A. F. L., filed with the Board an administrative appeal from a ruling which had been made by the Board's Fifth Regional Director in conformity with the earlier ruling of the Board's General Counsel.[4] On October 7, 1947, the Board, without a formal hearing, rendered an ex parte decision on the question at issue *Northern Virginia Broadcasters, Inc.*, 75 NLRB 11.[5]

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[1] Preliminary Report of the Joint Committee on Labor-Management Relations, S. Rept. No. 986, 80th Cong., 2d Sess., pp. 10-12.

[2] Official Report of Proceedings of the American Federation of Labor, San Francisco, 1947, pp. 482-505.

[3] Daily Labor Reporter, September 16, 1947, No. 181-A-1.

[4] Daily Labor Reporter, September 14, 1947, No. 183-A-1.

[5] In an article describing the circumstances surrounding this decision Mr. Denham, the Board's General Counsel, says: "The first difference with the Board involved the Taft-Hartley requirement of non-communist affidavits from officers of a union and from 'the

The annual convention of the C. I. O. was scheduled to commence on October 13, 1947. In advance of this convention anti-communist unions in the C. I. O. announced that they would insist upon a "show-down" in the convention to force compliance by the C. I. O. with Section 9 (h) of the Act, in order that they should no longer be deprived of the facilities of the Board. Upon the Board's ruling in the *Northern Virginia Broadcasters* case being announced, however, the "show-down" by the anti-communist and pro-communist forces failed to develop.[6] Thus, was lost an opportunity for the accomplishment of Congress' purpose, the weeding out of Communist influence.

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officers of any national or international labor organization of which it is an affiliate or constituent unit.' By agreement with the same two holdover board members as to what the rule would be, I announced that officers of the A. F. L. and C. I. O. would have to sign. The air was at once filled with brickbats.

"C. I. O. officials protested that not a single C. I. O. union could make use of the law because of the presence of Ben Gold, a Communist Party leader, among the C. I. O. officers. A. F. L. officials complained that none of their unions could use the NLRB machinery because of John L. Lewis, a vice-president, who wasn't a commie but was too stubborn to sign. My answer to both of them was, 'Well, the only thing to do is to get rid of those fellows. That's what the law is for.'

"They didn't like that, and went to see members of the Board. A day or so later, one of the Board members called to advise me that he hadn't understood what we had agreed upon, and that he would have to withdraw from the agreement. The next day the second member came to say he had understood it thoroughly, but that he would have to pull out too." (Saturday Evening Post, Dec. 30, 1950, "And So I Was Purged" by Robert N. Denham as told to Stacy V. Jones, pp. 23, 73.)

[6] Daily Labor Reporter, October 7, 1947, No. 196-A-3. "What promised to be an explosive issue at C. I. O.'s 1947 convention—compliance . . . by filing . . . affidavits with the National Labor

Relations Board—is knocked down to the status of an academic . . . discussion by action of the Board's General Counsel in abandoning his rule that top C. I. O. (and A. F. L.) officials must submit these affidavits. Already in the air at A. F. L.'s convention at San Francisco, the issue would have been posed to C. I. O.'s convention next week. . . . For C. I. O., Denham's reversed rule is a boon. Had that ruling stood until next week, there would have been a left-right fight at the convention . . ."